IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 36433 of 2007(K)

AGAINST THE ORDER DATED 27/11/2007 IN IA 1975/07 IN OP(ELE) 12/2005 of MUNSIF COURT, KUTHUPARAMBA

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PETITIONER:

PAMBACKAL MATHEW, SON OF MATHAI,
PAMBACKAL HOUSE, AYYANKUNNU AMSOM DESOM,
P.O.ANGADIKADAVU, KANNUR-670 706.

BY ADV. SRI.VIJAI MATHEWS
SRI.JIJI THOMAS PAMBACKAL

RESPONDENT:

VALIYATHOTTIYIL THOMAS,
SON OF JOSEPH, VALIYATHOTTIYIL,
AYYANKUNNU AMSOM DESOM, P.O.ANGADIKADAVU,
KANNUR-670 706.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.36433 OF 2007

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Dated this the 10th day of December 2007

JUDGMENT

This writ petition is filed to set aside Ext.P10 order passed by the Munsiff's Court, Kothuparamba in I.A.No.1975/2007 in O.P.(Ele.)12/2005. It is a case where the election is challenged on the ground of double voting. In pursuance to the said pleading the petitioner herein had taken out summons to witnesses Nos.1,3, 5,6,7,9,10,11,13,15,17,18,19,20,21,23,25,26 28,29,30, 32 and 35 to 44. All of them were returned unserved stating that they were not found in the locality. So far as summons to witnesses Nos.2,4,8,12,14,16,22,24,27 and 34 they were returned unserved stating that they are not in the amsom. Learned counsel for the petitioner contends before me that the court shall permit him to effect service by substituted services as laid down in Chapter relating to issue and service of summons. Learned counsel also had brought to my attention to Order 16 Rule 8, where it is submitted that every summons shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summons served under this

rule. It has to be stated that unlike summons to a defendant in the suit, summons to a witness stands on a different footing because his presence in person is necessary before the court for the purpose of examination. The very object of summoning a witness is to procure his presence and examine him to prove the case. It is reported that some of the witnesses are returned unserved as they are not found in the locality and others were returned stating that they are not in the amsom.

2. It is submitted by the learned counsel for the petitioner that it is on account of the deliberate act of these witnesses they are not available and they are evading service of summons on them. In a case, especially relating to election, the court has to be more meticulous about the procedural and substantial compliance. The mere service of notice by affixture though permitted by law may not be in stricto senso a proper service which will be sufficient in such cases. If witnesses are evading summons deliberately the petitioner in the election case or his representative can accompany the process server to point out them and the process server can attempt to serve notice on them. Similarly as contemplated under Order 5 Rule 19A there can be simultaneous issuance of summons by registered post with acknowledgment due. If the persons are remaining absent after the intimation or they are sent back as unclaimed, then also the court can

declare that there has been proper service of summons on them and then proceed with the other formalities that has to be complied with when a witness who receives the summons does not appear before court inspite of the same.

Therefore I dispose of the writ petition whereby permitting the present petitioner to take out summons once again and the court below shall permit him or his representative to accompany the process server and point out the witnesses so that it can be served on them. Simultaneously in order to avoid delay he be permitted to take out summons by registered post with acknowledgment due and when these methods are adopted the court shall consider whether there is proper service of summons on the witnesses and then proceed in accordance with law to get their presence as stipulated under Order 16 Rule 12. C.P.C.

M.N.KRISHNAN, JUDGE

Cdp/-